

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	DECISION
In the Matter of Protest of:)	
)	CASE No. 2010-104
Stericycle, Inc.)	
)	
)	
)	
Materials Management Office)	POSTING DATE: APRIL 19, 2010
IFB No. 5400001463)	
Infectious Waste Disposal for the)	MAILING DATE: APRIL 19, 2010
<u>Medical University of SC</u>)	

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Stericycle, Inc. (Stericycle). With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure infectious waste disposal for the Medical University of South Carolina (MUSC). In the letter, Stericycle protested MMO's rejection of its bid as late alleging that its representative delivered the bid to MMO prior to the bid opening.

In order to resolve the matter, the CPO conducted a hearing April 8, 2010. Appearing before the CPO were Stericycle, represented by Dawn Spencer and Nancy White and MMO, represented by Cooper Marlowe, Procurement Manager.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On January 20, 2010, MMO issued the IFB. The bid opening was announced as February, 22, 2010 at 11:00AM. [Ex. 1]
2. On January 28, 2010, MMO issued Amendment #1. The bid opening remained February 22, 2010 at 11:00AM. [Ex. 2]
3. On February, 5, 2010, MMO issued Amendment #2 announcing the bid opening would stay February 22, 2010 at 11:00AM. [Ex. 3]
4. On February 22, 2010, at 11:00AM MMO conducted the bid opening of the only bid from Waste Industries. MMO rejected Stericycle's bid as late.
5. On February 22, 2010, Stericycle protested to the CPO.

CONCLUSIONS OF LAW

At issue is the timeliness of Stericycle's delivery of its bid and whether MMO was justified in rejected said bid. Stericycle argued that its bid was received before the designated opening; MMO that it was not.

In its protest letter, Dawn Spencer of Stericycle wrote, "Stericycle attempted hand delivery of our bid response to the Materials Management Office in Columbia, SC this morning. The Stericycle employee made her way to the Bid Clerk's office prior to 11am, was waved in via hand signal, then waved to hold up and wait while the Bid Clerk tended to another respondent. When the Bid Clerk finished with the other respondent and our Courier was waved forward, our Courier was told it was too late and we could not submit. Had our Courier been aware that she had to immediately request a time stamp while she was waiting, she would have done so. Since she was physically standing in the office and the Clerk was aware she was there, she thought she was following proper protocol."

At the request of the CPO, Nancy White of Stericycle submitted the following affidavit.

I entered Suite 600 and looked at the clock that was above an employee directly in front of me. I believe that I had approximately 30 seconds before 11:00 a.m. However, the wooden door where the bids were being opened was closed. I questioned the receptionist about the door being closed for bids and stated "You have got to be kidding." She suggested that I go out of the door and back in a door to my right and if the door was open to go in.

When I arrived at the door there was an employee reading from some papers. I waited until she motioned for me to enter. When I entered she motioned for me to stop and wait. I waited for her to finish speaking and I then told her that when I came into Suite 600 the wooden door was closed to the room she was in so I had to enter from a different door. She stated that I was too late and she could not take the bid. We discussed this for a period of time. As I started to leave I asked her to give me something that said they refused to take the bid. She looked around the room for something. I suggested she write it on her business card. She went to the other side of the room, removed a piece of paper from a printer, walked to the door where I had entered and stamped the paper. She then wrote on the paper that she could not accept the bid and then signed the paper and included her phone number. As I left I looked at the date stamp which read 11:05 a.m. The fact remains that I was in Suite 600, the designated Materials Management Office, prior to 11 a.m. on February 22nd and was not allowed to turn in the bid.

At the hearing, Ms. White added that she had arrived at the bid opening thirty minutes before the scheduled opening at 11:00, checked with the bid clerks, and went downstairs to make an adjustment to Stericycle's bid. She then returned to the bid opening.

Regarding the safe guarding of bids, the Consolidated Procurement Code provides the following guidance.

(4) Receipt and Safeguarding of Bids. All bids, including modifications, received before the time of opening must be kept secure and unopened, except as provided by regulation of the board. [11-35-1520(4)]

The supporting regulations read:

All bids (including modifications) received prior to the time of opening shall be kept secure and, except as provided in subsection B below, unopened. Necessary precautions shall be taken to insure the security of the bid. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to the state employees, and then only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening. [19-445.2045]

Regarding the conduct of bid openings, the Code reads:

(5) Bid Opening. Bids must be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids and in the manner prescribed by regulation of the board. The amount of each bid, and other relevant information as may be specified by regulation, together with the name of each bidder, must be tabulated. The tabulation must be open to public inspection at that time. [11-35-1520(5)]

The supporting regulations read;

The procurement officer of the governmental body or his designee shall decide when the time set for bid opening has arrived, and shall so declare to those present. In the presence of one or more state witnesses, he shall then personally and publicly open all bids received prior to that time, and read aloud so much thereof as is practicable, including prices, to those persons present and have the bids recorded. The amount of each bid and such other relevant information, together with the name of each bidder, shall be tabulated and certified in writing as true and accurate by both the person opening the bids and the witness. The tabulation shall be open to public inspection. [19-445.2050]

MMO personnel and Fred Schechter of Waste Industries offered their recollections of the bid opening, as well.

Toyette Hazzard, Administrative Specialist II, wrote

My office is located directly in front of the front door of Suite 600, and I was present at work on the morning of Monday, February 22, 2010 starting at 9:30am to 5:00pm. At 11:00am the Bid Room closed their door for a bid opening. A woman came through the front door and walked towards the Bid Room a couple of minutes later. After seeing that the door was closed, she went to the Receptionist's window. During this conversation I was able to hear the Receptionist tell the woman that the door being closed means that the bid opening is now in progress. The woman became agitated, saying that the bid she was carrying was supposed to be in there. The Receptionist apologized and told the woman again that her bid wouldn't be able to be accepted since the bid opening was already in progress beginning at 11:00.

Edna Sims, Administrative Assistant, Bid Clerk, who conducts the bid openings, wrote:

At 10:55 a.m. on Monday, February 22, 2010, I (Edna) invited the vendor in the waiting room to enter the bid room, and to sign in on the vendor sign in sheet. One vendor/bidder entered and sign in. At the hour of 11:00 a.m. using the atomic clock, I time and date stamp the vendor log in sheet. This closing Statement was also recited, Bid opening is official closed, no further hand carry bid will be accepted. Wanda and I had already open the 4 bids received, Time and date stamp, with the 11:00 a.m. stamp. I (Edna) was the process of reading the price from the first response, when a female came

through the waiting room and stood at the door of the bid room, I made a jester for her to enter, after completing that bid. I asked how could I help you? She was making an attempt to deliver a bid for II :00a.m. I tried kindly to explain ALL bid must be received (time & date at the MMO office) prior/by the time of the opening.

Mr. Schechter provided a written statement and testified, in part, "At 10:55 I was called in (the bid room) and signed in. I was the only bidder present. At 11:00 am the woman stamped the sheet and announced no more bids would be accepted. Approximately 3 or 4 minutes later a woman came in with another bid and was told by the clerk that she was late and could not accept the bid." [Ex. 6]

Regarding rejection of individual bids, the regulations read, "Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected." [19-445.2070(A)] Timely bid delivery is an essential requirement of the invitation for bid. The regulations read further, "Any bid received after the procurement officer of the governmental body or his designee has declared that the time set for bid opening has arrived, shall be rejected unless the bid had been delivered to the location specified in the solicitation or the governmental bodies' mail room which services that location prior to the bid opening." [19-445.2070(G)]

According to Ms. Sims, at 11:00, in accordance with the regulation, she declared that the time set for bid opening has arrived. At that time, "At the hour of 11:00 a.m. using the atomic clock, I time and date stamp the vendor log in sheet. This closing Statement was also recited, Bid opening is official closed, no further hand carry bid will be accepted. Wanda and I had already open the 4 bids received, Time and date stamp, with the II:00 a.m. stamp."

Therefore, by law, Stericycle's bid must be rejected.

DETERMINATION

For the aforementioned reasons, the protest of Stericycle is denied.

Voight Shealy

R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

April 19, 2010

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2009-2010 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 23, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

Skinner, Gail

From: Protest-MMO [Protest-MMO@mmo.sc.gov]
Sent: Monday, February 22, 2010 2:31 PM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: Solicitation # 5400001463 - Infectious Waste Disposal Services at MUSC - PROTEST
Importance: High

From: Parker, Larry[SMTP:LPARKER@STERICYCLE.COM]
Sent: Monday, February 22, 2010 2:30:15 PM
To: Protest-MMO
Cc: Spencer, Dawn; Daddario, Rich
Subject: Solicitation # 5400001463 - Infectious Waste Disposal Services at MUSC - PROTEST
Importance: High
Auto forwarded by a Rule

Dear Sir:

Please accept this email as protest of the Solicitation for Infectious Waste Disposal Services at MUSC (#5400001463). Stericycle attempted hand delivery of our bid response to the Materials Management Office in Columbia, SC this morning. The Stericycle employee made her way to the Bid Clerk's office prior to 11am, was waved in via hand signal, then waved to hold up and wait while the Bid Clerk tended to another respondent. When the Bid Clerk finished with the other respondent and our Courier was waved forward, our Courier was told it was too late and we could not submit. Had our Courier been aware that she had to immediately request a time stamp while she was waiting, she would have done so. Since she was physically standing in the office and the Clerk was aware she was there, she thought she was following proper protocol.

As a company with Resident Vendor Preference, maintaining offices and operations within the state, and as one of the only bidder responding that fully owns all portions of this process without outsourcing the disposal, we strongly urge you to consider reviewing our bid. We can either hand deliver the original and copy or we can deliver via email. Please let us know your decision at your earliest opportunity.

Sincerely,

STERICYCLE, Inc.
Dawn Bryant Spencer
Regional Sales Director – Mid-Atlantic
Cell: (336) 710-0404
dspencer@stericycle.com

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2/22/2010

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